

**SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES OF SMALL EMPLOYERS
(SIMPLE IRA Plan) under § 408(p) of the Internal Revenue Code**

Listing of Required Modifications and Information Package

This information package contains samples of plan provisions that satisfy certain specific requirements of the Internal Revenue Code as amended through the Taxpayer Relief Act of 1997 (P.L. 105-34). Such language may or may not be acceptable in specific plans, depending on the context. We have prepared this package to assist sponsors who are drafting plans. To expedite the review process, sponsors are encouraged to use the language in this package.

- (1) Statement of Requirement: Definition of Employer, Code § 414(b), (c), (m) and (o).
Sample Plan Language:**

_____ ("Employer") establishes this SIMPLE IRA Plan under § 408(p) of the Code.

If the Employer is a member of a controlled group of corporations (under § 414(b) of the Code), a group of trades or businesses under common control (under § 414(c)), an affiliated service group (under § 414(m)) or is required to be aggregated with any other entity under § 414(o), then for purposes of this SIMPLE IRA Plan, the term "Employer" shall include the other members of such groups or other entities required to be aggregated with the Employer.

- (2) Statement of Requirement: Eligible employers, Code § 408(p)(2)(C)(i).
Sample Plan Language:**

An Employer may establish a SIMPLE IRA Plan for a calendar year if the Employer had no more than 100 employees who earned \$5,000 or more in Compensation from the Employer during the preceding calendar year (the "100-Employee limit").

If the Employer maintaining this plan exceeds the 100-Employee limit for a particular calendar year, the Employer is treated as meeting the 100-Employee limit for the 2 calendar years following the calendar year that such Employer last satisfied the 100-Employee limit. If the failure to continue to satisfy the 100-Employee limit is due to an acquisition or similar transaction, the 2-year grace period applies only if the Employer satisfies the provisions of § 410(b)(6)(C)(i) of the Code.

(3) Statement of Requirement: One-plan requirement, Code § 408(p)(2)(D).

Sample Plan Language:

The Employer cannot contribute to this SIMPLE IRA Plan for any calendar year if the Employer maintains another qualified plan with respect to which contributions are made, or benefits are accrued, for any Employee's service for any plan year beginning or ending in that calendar year (the "one-plan requirement").

For this purpose, a qualified plan is defined in § 219(g)(5) of the Code as:

a plan described in § 401(a) that includes a trust exempt from tax under § 501(a); an annuity plan described in § 403(a); a plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing (but not an eligible deferred compensation plan within the meaning of § 457(b)); a tax-sheltered annuity plan described in § 403(b); a simplified employee pension (SEP) plan described in § 408(k); and another SIMPLE IRA Plan described in § 408(p).

If the failure to meet the one-plan requirement is due to an acquisition or similar transaction, the Employer is treated as meeting the one-plan requirement through the end of the following calendar year (through the end of the following 2 calendar years, if permitted by § 408(p)) provided that, during this period, Employees who would be employed by another employer involved in the transaction had the transaction not occurred are not eligible to participate in this plan.

Special Rule

The one-plan requirement is not violated if the Employer maintains another qualified plan that limits participation to Employees covered under a collective bargaining agreement

described in § 410(b)(3)(A) of the Code and eligibility to participate in this SIMPLE IRA Plan is limited to other Employees.

**(4) Statement of Requirement: Definition of employee, Code §§ 408(p)(6)(B), 414(n) and 414(o).
Sample Plan Language:**

Employee means a common-law employee of the Employer, and also includes leased employees described in § 414(n) and employees described under § 414(o) that are required to be treated as employed by the Employer. The term "Employee" also includes self-employed individuals described in § 401(c)(1) of the Code.

**(5) Statement of Requirement: Eligibility, Code § 408(p)(4).
Sample Plan Language:**

An Eligible Employee is an Employee who meets the following requirements (select either a or b and complete applicable blanks):

☐ a. Full eligibility. All Employees are eligible.

☐ b. Limited eligibility. Eligibility is limited to each Employee who is described in both (i) and (ii) below:

(i) Prior year compensation. An Employee who has received at least \$5,000, or _____, if lesser, in Compensation during any 2, or _____ (insert 0 or 1), if less, preceding calendar years (need not be consecutive); and

(ii) Current year compensation. An Employee who is reasonably expected to receive at least \$5,000, or _____, if lesser, in Compensation during the current calendar year.

If checked, the following Employees are not Eligible Employees:

☐ Employees who are covered under a collective bargaining agreement if retirement benefits were the subject of good faith bargaining. NOTE: THIS BOX IS DEEMED CHECKED IF THE SPECIAL RULE FOR THE ONE-PLAN REQUIREMENT IN _____ APPLIES.

(Note to reviewer: The blank should contain the cite that corresponds to LRM # 3.)

[] Employees who are nonresident aliens and who receive no earned income from the Employer that constitutes income from sources within the United States.

If the Employer has been involved in an acquisition or similar transaction, by checking the box below, the following Employees are not Eligible Employees, but only for the calendar year of the transaction and the following calendar year (the following 2 calendar years, if permitted by § 408(p)):

[] Employees who would be employed by another employer involved in the _____ (insert date of transaction) transaction with the Employer had the transaction not occurred. NOTE: THIS BOX IS DEEMED CHECKED IF _____ APPLIES.

(Note to reviewer: The blank should contain the cite that corresponds to the third paragraph (relating to an acquisition or similar transaction) of LRM # 3.)

(6) Statement of Requirement: Employees' election periods and plan notice, Code §§ 408(p)(5)(C), 408(l)(2)(C) and 6693(c)(1).

Sample Plan Language:

60-day election periods

An Employee who is an Eligible Employee for a particular calendar year must be permitted to make or modify a salary reduction election during the 60-day period immediately preceding the calendar year, effective as soon as practical after receipt by the Employer (or, if later, the date specified by the Employee in the salary reduction agreement) but not earlier than the first pay period beginning in the calendar year. In the case of an Employee who becomes an Eligible Employee other than at the beginning of a calendar year because 1) this plan does not impose a prior-year-compensation requirement, 2) the employee satisfied this plan's prior-year-compensation requirement during a prior period of employment with the Employer, or 3) this plan is first effective after the beginning of a calendar year, the Eligible Employee must be permitted to make or modify a salary reduction election during the 60-day period that begins on the day plan notice is provided to the Employee and that includes the day the Employee becomes an Eligible Employee or the day before. In this case, the salary reduction election will become effective as soon

as practical after receipt by the Employer (or, if later, the date specified by the Employee in the salary reduction agreement) but any election made by the Eligible Employee may be modified prospectively any time during the 60-day period.

Other election periods

In addition to the 60-day election periods described above, Eligible Employees may make or modify their salary reduction elections during the following election periods:

(Insert a period or periods [e.g., semi-annually, quarterly, monthly, or daily] that will apply uniformly to all Eligible Employees.)

If an election is made or modified during one of these other election periods, it will become effective as soon as practical after receipt of the election by the Employer or, if later, the date specified by the Employee in the salary reduction agreement.

Plan notice

The Employer shall notify each Eligible Employee immediately before each 60-day election period of the Employee's opportunity to make an election. The notice shall include a copy of the summary description as described in § 408(l)(2)(B) of the Code. (Section 6693(c)(1) provides that if an employer fails to provide one or more notices, such employer may be subject to a penalty of \$50 per day for each day that the failure to provide notice occurs.)

**(7) Statement of Requirement: Salary reduction elections, Code §§ 408(p)(2)(A)(ii) and 408(p)(2)(E).
Sample Plan Language:**

An Eligible Employee may elect to have his or her Compensation reduced by a percentage or a fixed dollar amount. The salary reduction election shall be in writing and delivered to the Employer. The total amount of the reduction in the Eligible Employee's Compensation cannot exceed \$6,000 as adjusted by the Secretary of the Treasury for cost-of-living increases under § 408(p)(2)(E) of the Code. Such adjustments will be in multiples of \$500.

(8) Statement of Requirement: Employees' right to terminate salary reduction elections, Code § 408(p)(5)(B).

Sample Plan Language:

An Eligible Employee must be permitted to terminate a salary reduction election at any time. The termination request must be in writing and become effective as soon as practical after receipt of the request by the Employer or, if later, the date specified by the Employee in the termination request.

[] If checked, an Eligible Employee who terminates a salary reduction election outside an election period may not make a new salary reduction election that is effective earlier than the beginning of the next calendar year. However, if an Eligible Employee terminates a salary reduction election during an election period, the Employee must be permitted to make a new salary reduction election during any subsequent election period.

(9) Statement of Requirement: Full vesting requirements, Code § 408(p)(3).

Sample Plan Language:

The interest of an Eligible Employee in the balance of his or her SIMPLE IRA established under this SIMPLE IRA Plan is nonforfeitable at all times.

(10) Statement of Requirement: Employer matching contributions, Code §§ 408(p)(2)(A)(iii) and 408(p)(2)(C)(ii).

Sample Plan Language:

Matching Contributions

For each calendar year, the Employer must make a matching contribution to each Eligible Employee's SIMPLE IRA in an amount equal to the Employee's salary reduction contributions up to a limit of 3% of the Employee's Compensation for the calendar year.

For any year, the Employer may reduce the 3% limit if the following requirements are met:

- (1) The limit is not reduced below 1%;
- (2) The limit is not reduced for more than 2 calendar years during the 5-year period ending with the calendar year the reduction is effective; and

- (3) Each Eligible Employee is notified of the reduced matching contribution limit within a reasonable period of time before the Employee's 60-day election period for that calendar year.

For purposes of (2) above, the limit is not considered reduced for any year any SIMPLE IRA Plan of the Employer is not in effect or for any calendar year with respect to which the Employer makes nonelective contributions to a SIMPLE IRA Plan.

- (11) Statement of Requirement: Alternative 2% nonelective employer contributions, Code § 408(p)(2)(B).
Sample Plan Language:**

Nonelective Contributions

For any calendar year, in lieu of matching contributions, the Employer must make a nonelective contribution to the SIMPLE IRA for each Eligible Employee who receives at least \$5,000, or _____, if lesser, in Compensation from the Employer for the calendar year in an amount equal to 2% of the Eligible Employee's Compensation.

The Employer must notify each Eligible Employee of the nonelective contribution within a reasonable period of time before each Employee's 60-day election period for that calendar year.

Compensation taken into account in determining the 2% nonelective contribution cannot exceed the Compensation limit described in § 401(a)(17) of the Code as adjusted by the Secretary of the Treasury for increases in the cost of living in accordance with § 401(a)(17)(B). Such adjustments will be in multiples of \$10,000. (The Compensation limit for 1997 is \$160,000.)

(12) Statement of Requirement: Time for depositing contributions, Code § 408(p)(5)(A).

Sample Plan Language:

The Employer must make a salary reduction contribution to the SIMPLE IRA established for each Eligible Employee under this SIMPLE IRA Plan as of the earliest date on which the contributions for an Eligible Employee can reasonably be segregated from the Employer's general assets, but in no event later than 30 days after the end of the month in which the contribution is withheld from the Employee's pay.

The Employer must make the matching or nonelective contribution to the SIMPLE IRA established for each Eligible Employee under this SIMPLE IRA Plan no later than the due date for filing the Employer's federal income tax return, including extensions, for the taxable year that includes the last day of the calendar year for which the contribution is made.

(13) Statement of Requirement: Employees' selection of financial institutions, Code § 408(p)(7).

Sample Plan Language:

Unless the Employer has checked the box indicating that it has selected a designated financial institution, the Employer must permit each Eligible Employee to select the financial institution for his or her SIMPLE IRA.

(14) Statement of Requirement: Designated financial institution, Code § 408(p)(7).

Sample Plan Language:

Designated financial institution

[] If checked, the Employer will designate the financial institution at which SIMPLE IRAs will be established to receive contributions for Eligible Employees. A designated financial institution is a trustee, custodian, or insurance company (that issues annuity contracts) that receives all contributions made pursuant to this SIMPLE IRA Plan and deposits those contributions to the SIMPLE IRA of each Eligible Employee.

Pursuant to the provisions of § 408(p)(7) of the Code, the designated financial institution will notify Eligible Employees in writing (either separately or as part of the plan notice

described in § _____ of the plan document) that their SIMPLE IRA balances may be transferred without cost or penalty to another SIMPLE IRA in accordance with the withdrawal and rollover provisions under § 408(d)(3)(G).

(Note to reviewer: The blank should contain the cite that corresponds to LRM # 6.)

The designated financial institution for this SIMPLE IRA Plan is (insert name and address below):

(15) Statement of Requirement: Definition of compensation, Code § 408(p)(6)(A).

Sample Plan Language:

Compensation means with respect to an Employee the sum of the wages, tips, and other compensation from the Employer subject to federal income tax withholding (as described in § 6051(a)(3) of the Code) and the Employee's salary reduction contributions made under this plan, and, if applicable, elective deferrals on behalf of the Employee under a § 401(k) plan, a SARSEP, a § 403(b) annuity contract and compensation from the Employer deferred under a § 457 plan required to be reported by the Employer on Form W-2 (as described under § 6051(a)(8)). Compensation does not include any amounts deferred by the Employee pursuant to a § 125 cafeteria plan.

For a self-employed individual, Compensation means the net earnings from self-employment with respect to the Employer determined under § 1402(a) of the Code prior to subtracting any contributions made pursuant to this plan on behalf of the individual.

(16) Statement of Requirement: Rev. Proc. 87-50, 1987-2 C.B. 647; Rev. Proc. 97-29, 1997-24 I.R.B. 9.

Sample Plan Language:

This SIMPLE IRA Plan must be used with an Internal Revenue Service model IRA, Form 5305-S or 5305-SA, or a Service-approved prototype SIMPLE IRA.

(17) Statement of Requirement: Withdrawals must be permitted,
Code §§ 408(p)(3) and 408(k)(4).

Instructions:

Delete any language that prohibits or restricts participants from
making withdrawals from their retirement accounts at any time.

(18) Statement of Requirement: Plan amendments.

Sample Plan Language:

Any amendment to this SIMPLE IRA Plan can become effective only at the beginning of a calendar year and must conform to the content of the plan notice for the calendar year.

Notification to Eligible Employees

I. Opportunity to Participate in the SIMPLE IRA Plan

You are eligible to make salary reduction contributions to this SIMPLE IRA Plan. This notice and the attached summary description provide you with information that you should consider before you decide whether to start, continue, or change your salary reduction election.

II. Employer Contribution Election

For the _____ calendar year, the Employer elects to contribute to your SIMPLE IRA (Employer must select (1), (2), or (3)):

_____ (1) A matching contribution equal to your salary reduction contributions up to a limit of 3% of your Compensation (as defined in § _____ of the plan document) for the calendar year;

(Note to reviewer: The blank should contain the cite that corresponds to LRM # 15.)

_____ (2) A matching contribution equal to your salary reduction contributions up to a limit of _____% (Employer must insert a number from 1 to 3 and is subject to certain restrictions) of your Compensation for the year; or

_____ (3) A nonelective contribution equal to 2% of your Compensation for the year (Compensation being limited to \$160,000*) if you are an Employee who makes at least \$_____ (Employer must insert an amount that is \$5,000 or less and is the same as in § _____ of the plan document) in Compensation for the year.

(Note to reviewer: The blank should contain the cite that corresponds to LRM # 11.)

III. Administrative Procedures

If you decide to start or change your salary reduction election, you must complete the salary reduction election and return it to

(Employer should designate a place or an individual) by _____ (Employer should insert a date that is not less than 60 days after notice is given).

(Note to reviewer: If the plan permits each participant to select a SIMPLE IRA (at the financial institution chosen by the participant), then the following should be included in this notice.)

IV. Employee Selection of Financial Institution

You must select the financial institution that will serve as the trustee, custodian, or issuer (in the case of annuity contracts) of your SIMPLE IRA used with this plan and notify your Employer of your selection.

* This amount will be adjusted to reflect any annual cost-of-living increases announced by the IRS.

(Note to reviewer: The plan's notification form is not required to be submitted to the Service in order to receive an opinion letter on the plan.)

Salary Reduction Agreement

I. Salary Reduction Election

Subject to the requirements of the SIMPLE IRA Plan of _____ (name of Employer) I authorize

_____ % or

\$_____ (which equals _____ % of my current rate of pay)

to be withheld from my pay for each pay period and contributed to my SIMPLE IRA as a salary reduction contribution.

II. Maximum Salary Reduction

I understand that the total amount of my salary reduction contributions in any calendar year cannot exceed \$6,000.*

III. Date Salary Reduction Begins

I understand that my salary reduction contributions will start as soon as permitted under the SIMPLE IRA Plan and as soon as administratively feasible or, if later, _____.
(Fill in the date you want the salary reduction contributions to begin. The date must be after you sign this agreement.)

IV. Termination of Election

I elect to terminate my salary reduction election on _____. (Fill in the date you want the salary reduction contributions to end. The date must be after you sign this agreement.)

V. Duration of Election

This salary reduction agreement replaces any earlier agreement and will remain in effect as long as I remain an Eligible Employee under the SIMPLE IRA Plan or until I provide my

Employer with a new salary reduction agreement as permitted under this SIMPLE IRA Plan.

Signature of Employee _____
Date _____

(Note to reviewer: If the plan permits each participant to select a SIMPLE IRA (at the financial institution chosen by the participant), then the following should be included in this agreement.)

VI. Employee Selection of Financial Institution

I select the following financial institution to serve as the trustee, custodian, or issuer of my SIMPLE IRA.

Name of financial institution

Address of financial institution

SIMPLE IRA account name and number

I understand that I must establish a SIMPLE IRA to receive any contributions made on my behalf under this SIMPLE IRA Plan. If the information regarding my SIMPLE IRA is incomplete when I first submit my salary reduction agreement, I realize that it must be completed by the date contributions must be made under the SIMPLE IRA Plan. If I fail to update my agreement to provide this information by that date, I understand that my employer may select a financial institution for my SIMPLE IRA.

Signature of Employee _____
Date _____

* This amount will be adjusted to reflect any annual cost-of-living increases announced by the IRS.

(Note to reviewer: The plan's employee election form is not required to be submitted to the Service in order to receive an opinion letter on the plan.)